

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RAQUEL CONTRERAS, INDIVIDUALLY	§	CIVIL ACTION NO. 5:20-cv-137
AND A/N/F OF M.C. III, A MINOR	§	
	§	
V.	§	
	§	
WAL-MART STORES TEXAS, LLC.	§	JURY TRIAL REQUESTED

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES Plaintiffs Raquel Contreras, Individually and As Next Friend of M.C. III, a minor, complaining of Wal-Mart Stores Texas, LLC, and for cause of action shows:

PARTIES

1. Plaintiffs Raquel Contreras, Individually and As Next Friend of M.C. III, a minor, are citizens of the United States and residents of San Antonio, Bexar County, Texas.

2. Defendant Wal-Mart Stores Texas, LLC ("Defendant Wal-Mart" or "Defendant") is a limited liability company formed under the laws of Delaware with its principal place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Defendant Wal-Mart can be served with Plaintiff's Original Petition through its registered agent, CT Corp. System, 1999 Bryant Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 because: (1) there is complete diversity of citizenship between all Plaintiffs and Defendant; and (2) there is more than \$75,000 in controversy exclusive of interests and costs.

4. Venue is appropriate in this judicial district pursuant to 28 U.S.C. §139(b)(2) because this premises liability incident occurred in Bexar County, Texas within this judicial district.

FACTS

5. Plaintiffs Raquel Contreras, Individually and As Next Friend of M.C. III, a minor, (collectively “Plaintiffs”) bring this suit to recover damages for personal injuries sustained in a premises liability incident that occurred on or about March 1, 2018.

6. Plaintiffs were invitees and shopping at Wal-Mart store #3058, located at 918 Bandera Road, San Antonio, Texas 78228. Wal-Mart store #3058 is a store that is open to the public for purposes of transacting business. Defendant Wal-Mart extended an implied invitation to Plaintiffs to enter its store, located at 918 Bandera Road, San Antonio, Texas 78228.

7. As Plaintiffs were shopping at Wal-Mart store #3058, suddenly and without warning, a dangerous clothing rack in the children’s clothing section collapsed on Plaintiff M.C. III, a minor’s, head, causing him serious and permanent injuries.

PLAINTIFF’S CLAIM OF NEGLIGENCE – PREMISES LIABILITY- AGAINST DEFENDANT WAL-MART

8. Defendant Wal-Mart owned, operated, managed and controlled the subject premises at 918 Bandera Road, San Antonio, Texas 78228.

9. Plaintiffs entered Defendant Wal-Mart’s premises with Defendant’s knowledge and for their mutual benefit. Plaintiffs were invitees on Defendant’s premises at the time of the incident made the basis of this lawsuit occurred.

10. The clothing rack which collapsed on Plaintiff M.C. III, a minor’s, head, constituted a dangerous condition.

11. Defendant knew or should have known of the dangerous condition, identified in paragraph 7 above, that posed an unreasonable risk of harm to Plaintiffs.

12. Defendant owed a duty use ordinary care to ensure that the premises did not present a danger to Plaintiffs. This duty included the duty to inspect, the duty to adequately warn and the duty to make the condition reasonably safe.

13. Defendant's breach of this duty proximately caused Plaintiffs' damages.

14. As a result of the dangerous condition created by Defendant's agents, servants or employees at the time and on the occasion in question, which acts and omissions constituted negligence, Defendant's breach of its duty of care to Plaintiffs proximately caused damages to Plaintiffs, such acts or omissions of Defendant include the following:

- a. Failing to abate a dangerous condition on its premises;
- b. Failing to have the premises inspected for dangerous conditions and or hazards located on the premises;
- c. Failing to act with reasonable care to remedy the dangerous condition Defendant knew, or in the exercise of ordinary care, should have known was present;
- d. Failing to make safe the dangerous condition Defendant knew or should have known of; and
- e. Failing to warn of an unreasonably dangerous condition on the premises.

DAMAGES

15. Each of the aforementioned acts and omissions constituted negligence on the part of Defendant Wal-Mart and were a proximate cause of the occurrence in question and the injuries and damages sustained by Plaintiffs.

Damage for Plaintiff Raquel Contreras

16. As a result of the occurrence described herein, Plaintiff Raquel Contreras, has sustained the damages described herein as follows:

- a. Reasonable expenses of necessary medical care incurred by M.C. III, a minor, in the past; and
- b. Bystander claim for mental anguish on behalf of Plaintiff Raquel Contreras, who was near Plaintiff M.C. III, a minor, at the time the Defendant's clothing rack fell on M.C. III, a minor's head, causing him serious injuries. Plaintiff Raquel Contreras suffered shock as a result of the subject accident, wherein she experienced a direct emotional impact from a sensory and contemporaneous observance of her child's accident.

17. All of the injuries and damages sustained by Plaintiff Raquel Contreras were proximately caused by the negligent acts of the Defendant sued herein.

Damages for Plaintiff M.C. III, a minor

18. As a result of the occurrence described herein, Plaintiff M.C. III, a minor, has sustained the damages described herein as follows:

- a. Reasonable expenses of necessary medical care that, in reasonable probability, M.C. III, a minor, will incur in the future;
- b. Physical pain and mental anguish sustained in the past;
- c. Physical pain and mental anguish that, in reasonable probability, M.C. III, a minor, will sustain in the future;
- d. Physical impairment sustained in the past;
- e. Physical impairment that, in reasonable probability, M.C. III, a minor, will sustain in the future;
- f. Disfigurement in the past; and
- g. Disfigurement that, in reasonable probability, M.C. III, a minor, will sustain in the future.

19. All of the injuries and damages sustained by Plaintiff M.C. III, a minor, were proximately caused by the negligent acts of the Defendant sued herein.

USE OF DOCUMENTS AT TRIAL OR PRETRIAL PROCEEDINGS

20. Plaintiffs intend to use at one or more pretrial proceedings and/or at trial all

documents produced by Defendants in this case in response to written discovery requests.

JURY DEMAND

21. Plaintiffs hereby exercise their right to and make a demand for trial by jury and have tendered the appropriate fee to the Court.

MISNOMER

22. In the event that Plaintiffs have misspelled the name of a party or incorrectly identified the entity (such as Inc. versus L.L.C.), Plaintiffs plead misnomer.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant be cited and be commanded to appear and answer this lawsuit in the time and manner prescribed by law and that upon final hearing thereon, Plaintiffs be awarded a Judgment of and against the Defendant in the sums sued for herein, for costs of Court in this behalf expended, for prejudgment interest on the amount awarded as damages at the legal rate from the date of accident to the date of judgment, and thereafter at the post-judgment rate until paid, exemplary damages, and for such other and further relief to which these Plaintiffs are entitled in law and in equity and as this Court may deem just and proper.

Respectfully submitted,

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